

Honorable Chief Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

LONNIE EUGENE LILLARD,

Defendant.

NO. CR16-007 RSM

MOTION TO UNSEAL FOR LIMITED
PURPOSE

Noting Date: June 25th, 2021

A. Introduction

The United States of America, by Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and Michael S. Morgan, Assistant United States Attorney, submits this motion for an order unsealing a recording in the above-captioned case.

B. Discussion

The government requests that this Court sign an order unsealing the sealed recording of the *Faretta* hearing held before Magistrate Judge Mary Alice Theiler on June 13, 2017 (Dkt. #132) so that a transcript of the recording can be obtained for appellate purposes. During this hearing, Magistrate Judge Theiler denied Defendant

Motion to Unseal for Limited Purpose
United States v. Lillard, CR16-007 RSM - 1

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1 Lonnie E. Lillard's request to proceed pro se during the evidentiary hearing held to
2 determine (among other things) the loss amount resulting from Lillard's crime, as well as
3 the amount of restitution to be paid. Lillard objected to that ruling (Dkt. #150), and this
4 Court reviewed Magistrate Judge Theiler's ruling de novo, though it did listen to the
5 recording of the *Faretta* hearing conducted by Magistrate Judge Theiler as part of the
6 record the Court considered. The Court ultimately allowed Lillard to proceed pro se
7 during the evidentiary hearing (Dkt. #159, 161), though the Court also granted Lillard's
8 mid-hearing request to abandon his pro se status and to resume representation by
9 appointed counsel. Dkt. #173.

10 One of the issues raised by Lillard on his appeal is that the Court erred in allowing
11 him to proceed pro se because the Court's *Faretta* colloquy was purportedly inadequate.
12 Because the Court was reviewing Magistrate Judge Theiler's ruling, the contents of her
13 *Faretta* colloquy may be relevant to determining whether the record as a whole shows
14 that Lillard received adequate warnings before being allowed to proceed pro se.
15 Accordingly, because Lillard has placed the contents of this sealed hearing at issue in his
16 appeal, the Court should grant the government's motion and order this hearing unsealed
17 for purposes of responding to Lillard's appeal.

18 Because Lillard is represented by counsel on his appeal, the government has not
19 contacted Lillard to obtain his position on the current motion. Additionally, since
20 Lillard's appellate counsel does not represent Lillard in the proceedings in this Court
21 (Lillard was pro se at the time of sentencing), appellate counsel has also not been
22 contacted to obtain his position on this motion.

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1 DATED this 11th day of June, 2021.

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3 Respectfully submitted,

4 TESSA M. GORMAN
5 Acting United States Attorney

6 /s/ Michael S. Morgan
7 MICHAEL S. MORGAN
8 Assistant United States Attorney
9 700 Stewart Street, Suite 5220
10 Seattle, Washington 98101
11 Phone: 206-553-7970
12 E-mail: michael.morgan@usdoj.gov
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